

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ORDER ADOPTING RULES §
CONCERNING UNAUTHORIZED §
COURT REPORTING PRACTICES §

Before **STEELE**, Chief Justice, **HOLLAND**, **BERGER**, **JACOBS**, and **RIDGELY**, Justices, constituting the Court *en Banc*.

ORDER

This 4th day of November 2005, it appears to the Court that:

(1) Pursuant to Administrative Directive 132, this Court created the Board on Certified Court Reporters (the Board) to establish minimum standards of competency for persons engaged in the practice of court reporting and to allow for the governance of court reporters.

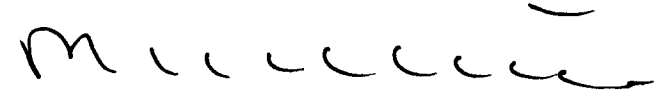
(2) Pursuant to Administrative Directive 132, the Board was charged, among other things, with adopting rules for the conduct of its hearing and its other business.

(3) On May 4, 2005, the Board submitted the attached Rules Concerning Unauthorized Court Reporting Practices, which this Court unanimously approved on May 26, 2005.

NOW, THEREFORE, IT IS ORDERED that the attached Rules Concerning the Unauthorized Court Reporting Practices are adopted, *nunc pro tunc*, effective May 26, 2005. The Clerk of the Court is directed to

transmit forthwith a certified copy of this Order to the clerk of each trial court in each county.

BY THE COURT:

A handwritten signature in black ink, consisting of a large initial 'M' followed by a series of loops and a final flourish.

Chief Justice

RULES CONCERNING UNAUTHORIZED COURT REPORTING PRACTICES

Scope. -- Pursuant to the Delaware Supreme Court's inherent and exclusive authority and jurisdiction over matters dealing with the profession and practice of court reporting in the State of Delaware, the Court has created the Board on Court Reporters (the "Board") pursuant to Administrative Directive 132 in order to consider such matters and to recommend appropriate action to the Court. Pursuant to Administrative Directive No. 132, Sections (D)(3) and (L), the Court hereby adopts the following Rules, which authorize the Board to act as the intake agency for all matters relating to the unauthorized or prohibited court reporting practices, and to evaluate, investigate, and prosecute such cases. The following Rules delineate the structure and procedures for a comprehensive regulatory system intended to protect the public from occurrences of the unauthorized or prohibited court reporting practices in the State of Delaware.

Rule 1. Board on Court Reporters.

(a) Powers and duties. In addition to the powers set forth in Administrative Directive 132, the Board shall have the power to investigate instances of alleged court reporting or court reporting practices that violate any provision of Administrative Directive 132, to institute actions in its name in any court of competent jurisdiction, and to take such other and further action, as the Board deems prudent and necessary to fulfill its duties and responsibilities.

(b) Advisory opinions. The Board shall not render advisory opinions on whether particular practices constitute improper court reporting or court reporting practices.

Rule 2. Review Boards.

(a) Appointment and composition. The Supreme Court shall, from time to time as is necessary, appoint a Review Board, comprising at least three members, to hear and adjudicate in the first instance, claims that persons subject to Administrative Directive 132 have violated provisions of that Directive, and shall designate a member of the Review Board as the Review Board Chair.

(b) Powers and Duties. The Review Board shall adjudicate all complaints brought before it and, subject to the provisions of these rules, shall hold such hearings, receive such evidence and make such rulings as it shall deem appropriate for the discharge of its duties.

Rule 3. Abstention of Board and Review Board members.

Members of the Board and any Review Board appointed pursuant to Rule 2 hereof shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain and shall for the purposes of such proceeding only, be considered "disqualified."

Rule 4. Meetings, quorum, and operations of the Review Board.

(a) Meetings. The Review Board shall meet upon call of the Review Board Chair, or in the absence or disqualification of the Review Board Chair, upon the call of any two members of the Board, or upon call of the Supreme Court, at such place and time as may be specified in the call.

(b) Quorum for hearings and meetings. Hearings before the Review Board in formal proceedings under these Rules shall be held before at least three members of the Review Board. Meetings of the Review Board shall be attended (in person or by telephone) by at least two members of the Review Board.

(c) Telephonic meetings. Except in respect of a hearing in any formal proceeding, the Review Board, or any of the members thereof, may participate in any meeting of the Review Board, or a committee or panel thereof, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting.

(d) Compensation and expenses. Members of the Review Board shall receive no compensation for their services but may be reimbursed for travel and other expenses incidental to the performance of their duties. The expenses of the Review Board shall be paid by the Review Board in accordance with a policy adopted by the Board.

(e) Administration of system. If appropriate, the Supreme Court may designate a person on its staff to serve as Review Board Administrator.

(f) Reports. Within six months after appointment of a Review Board, and at the end of each six-month period thereafter, the Review Board Chair shall file a report with the Supreme Court advising the Court of the following:

(1) The number of petitions filed with the Review Board during the previous year.

(2) The number of Review Board hearings conducted during the previous year.

(3) The number of Review Board recommendations filed with the Court during the previous year.

(4) The number of matters resolved through voluntary compliance during the previous year.

Rule 5. Jurisdiction.

(a) Persons Engaging in Court Reporting or Furnishing Court Reporting Services in Delaware. Any court reporter or court reporting agency engaging in court reporting or furnishing court reporting services in Delaware pursuant to Administrative Directive 132 is subject to the disciplinary jurisdiction of the Court. Such jurisdiction includes any formerly admitted court reporter with respect to acts committed prior to suspension or revocation of such person's privileges to engage in court reporting in Delaware or transfer to inactive status, or subsequent thereto that constitute a violation of Administrative Directive 132, or any rules or code subsequently adopted by the Court in lieu thereof, and any entity that provides or arranges, or previously provided or arranged, court reporting services within Delaware.

(b) Powers not assumed. These Rules shall not be construed to deny to any court the powers necessary to maintain control over its proceedings.

Rule 6. Grounds for discipline.

It shall be grounds for disciplinary action for a court reporter or court reporting agency to:

- (a) Violate any provision of Administrative Directive 132, or any subsequent directives, rules or code adopted by the Court in lieu thereof;
- (b) Engage in conduct that results in discipline in another jurisdiction;
- (c) Violate the terms of any private or public disciplinary disposition;
- (d) Fail to furnish information to or respond to a request for information from the Board, any Review Board or the Court, unless a protective order has been obtained from a Review Board or the Court; or
- (e) Fail to appear before the Court, the Board or any Review Board when required to do so.
- (f) Violate provisions of the Delaware Court Reporters' Code of Responsibility.

Rule 7. Sanctions.

(a) Types of sanctions. Misconduct shall be grounds for one or more of the following sanctions:

- (1) Revocation by the Court of a court reporter's privileges to engage in Court Reporting in Delaware;
- (2) Suspension of a court reporter's privileges to engage in court reporting in Delaware for an appropriate fixed period of time not in excess of three years;
- (3) Immediate interim suspension by the Court, pending final determination of disciplinary sanctions, or suspension by the Court of a court reporter's privileges to engage in court reporting in Delaware as a result of "show cause" proceedings or on a sua sponte basis;

(4) Public probation by the Court;

(5) Public reprimand by the Court;

(6) Private admonition by the Court or, with the consent of the respondent, by the Board;

(7) Private probation by the Court or, with the consent of the respondent, by Board; and

(8) Limitation by the Court on the nature and/or extent of the respondent's future practice of court reporting or providing or arranging for court reporting services in Delaware.

(b) Conditions. Written conditions may be attached to any disciplinary sanction.

(c) Mitigating or aggravating circumstances. Mitigating or aggravating circumstances that affect the nature or degree of discipline to be imposed in a matter shall be fully set forth in the Board report recommending to the Court an appropriate sanction.

(d) Dismissals. A disciplinary matter which results in a dismissal, with or without conditions or cautionary language, shall not be considered as the imposition of a disciplinary sanction.

Rule 8. Intake of complaints.

(a) Complaints. All information, whether received by complaint or otherwise, regarding a possible occurrence of unauthorized court reporting or prohibited court reporting practice in the State of Delaware shall initially be processed by the Board, which shall act as the intake agency for the receipt of all such information. Complaints should be in writing. Upon receipt of any such information, the Board shall open an appropriate file and assign the matter a docket number. Neither unwillingness nor neglect of the complainant to press a complaint once made, nor settlement, nor compromise between the complainant and any respondent, nor restitution by the respondent shall, in itself, justify abatement of the processing of any complaint.

(b) Evaluation and summary dismissal. Upon the receipt and docketing of a complaint or other information regarding a possible occurrence of the unauthorized court reporting or prohibited court reporting practice

in the State of Delaware, the Board shall conduct an evaluation of the matter. If the complaint or information on its face does not indicate an occurrence of unauthorized court reporting or prohibited court reporting practice in the State of Delaware, the Board shall summarily dismiss the matter without prejudice and close the file with written notice to the complainant.

(c) Criteria for evaluation. In evaluating any information involving the possible unauthorized court reporting or prohibited court reporting practice in the State of Delaware, the Board shall then determine whether such person has possibly engaged in any of the following types of conduct within the State of Delaware:

(1) Court reporting by a person not holding a valid certificate issued pursuant to Section (E) of Administrative Directive 132;

(2) Court reporting pursuant to a contract (whether oral or written) that covers multiple cases or administrative proceedings; or

(3) Contracts or arrangements that provide special terms or other services that are not offered at the same time and on the same terms to all other parties in the litigation.

(4) Conduct by court reporters that violates or is contrary to the Delaware Court Reporters' Code of Responsibility.

The foregoing description of types of conduct are to be used as general guidelines for evaluation by the Board, and not as definitions of the unauthorized court reporting or prohibited court reporting practices.

Rule 9. Investigations.

(a) Investigation by the Board. If the evaluation of a matter by the Board does not result in summary dismissal under Rule 8(b), the Board shall proceed to initiate an investigation of the matter, and shall request the Supreme Court to appoint or designate a Review Board with respect to that matter.

(b) Investigatory Subpoenas. Following the designation of a matter as an investigation under Rule 9(a), the Board may administer oaths and affirmations and may compel by subpoena the attendance of witnesses and the production of relevant books, papers, and documents.

Subpoenas shall be issued under the signature of the Board and served by any means deemed appropriate.

(c) Dismissal by Review Board. If at any point in the proceedings it appears to the Board that there is insufficient evidence of conduct involving an occurrence of the unauthorized court reporting or prohibited court reporting practice in the State of Delaware to prosecute the matter further, the Board shall dismiss the matter.

Rule 10. Formal proceedings.

(a) Approval of petition by the Review Board. Following an investigation, if the Board determines that there is sufficient evidence of conduct involving an occurrence of unauthorized court reporting or prohibited court reporting practice in the State of Delaware to warrant further prosecution, the Board shall draft a petition seeking appropriate relief. The petition shall be sufficiently clear and specific to inform the respondent of the alleged unauthorized court reporting or prohibited court report practice. The Board shall submit the draft petition to the Review Board for review, and no petition may be filed by the Board without the prior approval of the Review Board.

(b) Commencement of formal proceedings. Following approval of a petition by the Review Board, the Board shall sign and file the petition with the Review Board, and shall serve the petition upon the respondent pursuant to these Rules. Service shall inform the respondent that failure to file a response with the Review Board in a timely manner will result in the allegations and charges contained therein being deemed as conclusively established. The respondent shall file an answer with the Review Board within 20 days of service of the petition, with service of same upon the Board. In the event the respondent fails to answer in a timely manner, all factual allegations contained therein shall be deemed as conclusively established.

Rule 11. Service of petition and other papers; filing.

(a) Service. Service of the petition upon the respondent shall be made in the manner provided for service of a civil complaint under the Rules of Civil Procedure for the Superior Court and may be made by any person authorized by the Board to make such service. All papers subsequent to the petition which are filed with the Review Board shall be served upon each party to the proceeding. Service upon a party

represented by an attorney shall be made by serving the attorney unless service upon the party personally is ordered by the Review Board. Service upon the court reporter or reporting firm or upon a party shall be made by delivering a copy to the court reporter, reporting firm or party or by mailing it to the court reporter, reporting firm or party at such person's last known address. Delivery of a copy within this Rule means: Handing it to the court reporter, reporting firm or to the party; or leaving it at the court reporter's, reporting firm's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(b) Filing requirement and manner of filing. A petition to the Review Board and all other pleadings relating to a matter before the Review Board shall be filed with and maintained by the Review Board pursuant to the administrative procedures established by the Review Board. The filing of any such paper with the Review Board shall be made by delivering one original and three copies of such document to the Review Board Chair. All such documents shall thereupon be noted by the Review Board Chair as "filed" with the Review Board, with the date noted. The original copy of all such filings shall be retained by the Review Board Chair as the official record of the Review Board in the matter.

Rule 12. Subpoenas and discovery.

(a) Oaths and affirmations. Any member of the Review Board who is authorized by law to do so may administer oaths and affirmations in matters before the Review Board.

(b) Subpoenas.

(1) For the hearing, the Board and the respondent may compel by subpoena the attendance of such witnesses (including the respondent) and the production of such books, papers and documents as are relevant to the issues that are the subject matter of the hearing.

(2) After formal proceedings are instituted, the Board and the respondent may compel by subpoena the attendance of such witnesses and the production of such books, papers and documents at the

hearing as are relevant to the issues that are the subject matter of the hearing.

(c) Challenges to subpoenas. Any attack on the validity of a subpoena so issued shall be heard and determined by the Review Board, or by a court in the jurisdiction wherein enforcement of the subpoena is being sought.

(d) Enforcement of subpoenas. The Supreme Court may, upon proper application, enforce the attendance and testimony of any witnesses and the production of any documents subpoenaed.

(e) Depositions. With the approval of the Review Board, testimony may be taken by deposition (or by commission if the witness is not subject to service of subpoena or is unable to attend or testify at the hearing because of age, illness, absence from the State or other compelling reason). A complete record of the testimony so taken shall be made and preserved.

(f) Witness fees. Subpoena and witness fees and mileage shall be the same as those provided for proceedings in the Delaware Superior Court.

(g) Discovery disputes. Disputes concerning the scope and other aspects of discovery shall be determined by the Review Board. All discovery orders by the Review Board are Interlocutory and may not be appealed.

Rule 13. Hearings.

(a) Notice of hearing. If the Review Board determines there are material issues of fact raised by the pleadings or if any party requests the opportunity to be heard, the Review Board shall serve notice of a hearing upon the Board and the respondent, stating the date and place of the hearing at least 10 days in advance thereof. The notice of hearing shall advise the respondent that the respondent is entitled to be represented by a lawyer, to cross-examine witnesses and to present evidence in the respondent's own behalf. Briefs, argument or other submissions may be permitted in the discretion of the Review Board.

(b) Pre-hearing conference. Upon the application of any party or on its own motion, the Review Board may order a conference to be held

before the Review Board for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings.

(c) Stenographic record. A stenographic record shall be made of the hearing. The record of the hearing shall be made available to the respondent at the respondent's expense upon the respondent's request.

(d) Findings. Following a hearing, the Review Board shall express its findings of fact, conclusions of law, and recommended disposition in a final report which is sufficiently specific for the purposes of review by the Supreme Court. A copy of the report shall be served upon the parties.

(e) Supreme Court review. The Review Board's final report shall be filed with the Supreme Court together with the record of its proceedings, including transcripts, briefs, and other pleadings, within 90 days of the date upon which the matter was finally submitted to the Review Board. The Review Board shall promptly serve notice of such filing to the parties. Within 20 days of the receipt of such notice, any party may file objections to the Review Board's report with the Supreme Court. Such objections may not exceed five (5) pages in length. If objections are filed, the Court may then treat the matter pursuant to its rules governing civil appeals, designating the appropriate party as the appellant, and scheduling the matter for briefing and argument. If no objections are timely filed, the report of the Review Board shall be approved by order of the Court as the final disposition of the matter unless the Court orders otherwise within 30 days of the last date for filing objections. The final disposition of a matter by the Court shall be enforceable in the Court through contempt proceedings.

Rule 14. Witnesses and evidence.

All witnesses shall be sworn or shall give proper affirmation in all proceedings hereunder. The Delaware Uniform Rules of Evidence shall be followed as far as practicable, provided that evidence may be admitted and considered which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. Where the respondent is or has been a party to a proceeding, whether criminal, civil, administrative or otherwise, the relevant portions of the transcript of the proceedings, exhibits, findings of fact, conclusions of law, opinions, decisions and judgments, shall be admitted in evidence

and shall be accorded such weight as the Review Board shall deem appropriate; provided, however, that proof of a conviction of the respondent for any crime shall be conclusive evidence of the commission of that crime.

Rule 15. Burden of proof.

The burden of proving action constituting an unauthorized court reporting practice shall be upon the Board and shall be by clear and convincing evidence.

Rule 16. Rulings, orders, and reports.

The Review Board shall have power to make such rulings, dispositions, orders, recommendations, and reports as may be permitted these Rules. Any such action which is reduced to writing shall be signed by an appropriate member of the Review Board.

Rule 17. Voluntary compliance.

At any time after a matter is initially docketed by the Review Board, the respondent may voluntarily offer an assurance that the respondent shall not engage in the unauthorized court reporting or any prohibited court reporting practice in the State of Delaware. Any such voluntary assurance must be in writing and duly sworn, and must be approved in writing by the Review Board. Upon such approval, the voluntary assurance shall be filed by the Review Board in the Supreme Court with a petition for the Court's approval briefly describing the facts of the matter and a form of order. The Supreme Court's entry of an order approving the voluntary assurance shall be enforceable in the Supreme Court through contempt proceedings.

Rule 18. Notice to complainant.

The Board shall promptly notify the complainant, if any, as to the final disposition of each complaint after the matter is concluded.

Rule 19. Costs.

Unless otherwise ordered by the Supreme Court or Review Board, costs of all proceedings, including the costs of investigation, service of process, witness fees and court reporting services, shall be assessed against the respondent in any case where the Court makes a final determination that the respondent has engaged in unauthorized court reporting or a prohibited court reporting practice.

Rule 20. Rulings of the Review Board.

Except for the findings and other dispositions contained in the Review Board's final report pursuant to rule 13(d), all rulings of the Board shall be considered interlocutory and shall not be subject to interlocutory review by the Supreme Court.

Rule 21. Objections.

Objections to the findings of the Review Board following a hearing may be filed with the Supreme Court in the manner described in Rule 13(e). The pendency of the Supreme Court's review of the Review Board's findings pursuant to Rule 13(e) shall operate as a stay of such findings until final disposition by the Court.

Rule 22. Enforcement proceedings.

Whenever it shall come to the attention of the Board that a respondent is or may be in violation of an order of the Court, the Board shall initiate an investigation of the matter. If after investigation the Board determines that the respondent is not in violation, the Board shall dismiss the matter without prejudice, and close the file with written notice to the appropriate parties. If after investigation the Board concludes that the matter should not be dismissed, the Board shall draft a petition to the Court for a rule to show cause why the respondent should not be found in contempt and shall submit the draft petition to the Review Board for review; no such petition may be filed by the Board without the prior approval of the Review Board. Following approval of such petition by the Review Board, the Board shall file the petition with the Court, and shall serve the petition upon the respondent in the same manner as a petition which is initially filed with the Board. The respondent shall file an answer with the Court within

20 days of service of the petition, with service of same upon the Board. In the event that the respondent fails to answer the petition in a timely manner, or otherwise does not dispute the petition, all allegations and charges contained therein shall be deemed as conclusively established, and the Court may thereupon enter an appropriate order of enforcement. If the respondent answers the petition in a timely manner and disputes the allegations and charges contained therein, the Court may thereupon treat the matter as it would any contempt proceeding. The Court may direct that the Review Board conduct an evidentiary hearing with respect to the petition and submit a report with its findings and recommendations to the Court on the issue of contempt.

Rule 23. Immunity.

(a) From civil suit. Communications to any member of the Review Board or the Board relating to the alleged unauthorized court reporting practice and testimony given in the proceedings shall be absolutely privileged, and no civil lawsuit may be instituted against any complainant or witness based on such communications or testimony. All persons performing official duties under these Rules, including but not limited to members of the Board and the Review Board, the agents, employees or other persons working on behalf of the Board or the Review Board shall be immune from civil suit for any conduct in the course of their official duties.

(b) From criminal prosecution. Upon application by the Board or the respondent and notice to the Attorney General, the Supreme Court may grant immunity from criminal prosecution to a witness in any proceedings under these rules.

Rule 24. Confidentiality.

(a) Complaints, investigations, and hearings. In connection with a particular matter being considered by the Court, the Review Board, or the Board, all information and proceedings are confidential, except that the following shall be considered as public:

(1) the fact that a matter is being evaluated or investigated by the Board,

(2) the identity of a person being evaluated or investigated by the Board,

(3) the general subject matter, pendency, and status of a matter being evaluated or investigated by the Board,

(4) the official record in a matter as filed with the Review Board pursuant to Rule 8(b),

(5) hearings in particular matters before the Review Board,

(6) the rulings, orders, dispositions, and reports of the Board in particular matters, and

(7) the record and proceedings in particular matters which are reviewed by the Supreme Court.

(b) Protective orders. In order to protect the interests of complainants, witnesses, third parties or respondents, the Board may, upon application and for good cause shown, issue a protective order prohibiting the disclosure of specific information and direct that the proceedings be conducted so as to implement the order.

(c) Duty of participants. All participants in a proceeding under these rules shall conduct themselves so as to maintain the confidentiality mandated by any protective order.

Rule 25. Nature of proceedings.

Proceedings concerning the unauthorized court reporting practice are neither civil nor criminal but are sui generis.

Rule 26. Time.

(a) Computation of time. In computing any period of time prescribed or allowed by these Rules, the provisions of Supreme Court Rule 11(a), as amended from time to time, shall control.

(b) Effect of time limitations. Except as is otherwise provided in these Rules, time provisions stated in these Rules are directory and not jurisdictional. Failure to observe prescribed time intervals may result in

sanctions against the violator but does not justify abatement of any investigation or proceeding.

Rule 27. Limitations on actions.

An occurrence or course of conduct involving a possible unauthorized court reporting or prohibited court reporting practice which concluded prior to three years of the receipt of information of such activity by the Board may be evaluated or investigated by the Board for the purposes of verification, but shall not otherwise become the subject of formal proceedings before the Review Board pursuant to Rule 6.

Rule 28. Complaints against court reporter members of the Board.

Complaints against court reporter members of the Board alleging the unauthorized court reporting or a prohibited court reporting practice shall be submitted directly to the Supreme Court.

Rule 29. Permanent file of opinions.

All written opinions issued by the Review Board shall be public unless otherwise provided in accordance with Rule 21 and shall be maintained by the Review Board chair in a permanent file of opinions.

Rule 30. Effective date.

These rules shall become effective on June 1, 2005, and any investigation or other proceeding relative to an unauthorized court reporting practice pending on that date shall be processed pursuant to these rules from that point on unless the Supreme Court shall otherwise order to avoid substantial injustice.